

backbone.⁴²⁰ Further, while the merged entity may have an incentive to prioritize its own traffic using queuing or other such differentiated service mechanisms, by recent measures significant excess capacity remains on backbone networks.⁴²¹ Thus, in the absence of affirmative efforts to degrade a competitor's traffic, queuing and packet prioritization is likely to yield only very small increases in latency and packet loss in many cases.⁴²²

144. Finally, we take further comfort in the Applicants' commitment to conduct business in a manner that comports with the principles set forth in the Commission's September 23, 2005 Policy Statement designed to ensure that broadband networks are widely deployed, open, affordable, and accessible to all consumers.⁴²³ Because we find that this commitment will serve the public interest, we accept it and adopt it as a condition of our merger approval.

145. *Special Access and the Internet Backbone Market.* Several commenters maintain that the merged firm will have an incentive to leverage its alleged market power in the special access market to gain a competitive advantage in the backbone and broadband markets.⁴²⁴ As noted above, the issue of competition in the special access market is currently being addressed in two ongoing rulemaking proceedings, which will allow the Commission to address any competitive issues on a full record on an industry-wide basis.⁴²⁵

F. Wholesale Interexchange Competition

146. We find that the merger is not likely to result in anticompetitive effects in the wholesale interexchange services market. We conclude that the market will remain competitive post-merger, due primarily to the presence of extensive competitive national networks with excess capacity.

⁴²⁰ See, e.g., EarthLink Aug. 26 *Ex Parte* Letter at 4 (explaining that while VoIP calls are routed in a variety of ways today, EarthLink currently routes VoIP calls solely over Level 3's backbone until they are handed off to the PSTN); Letter from J.G. Harrington, Counsel for Cox, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 4 (filed July 28, 2005) (describing Cox's use of dedicated facilities, rather than the public Internet, for its provision of VoIP services). EarthLink speculates that within two years VoIP providers might choose to route 50% of VoIP traffic between Internet backbones. See, e.g., EarthLink Aug. 26 *Ex Parte* Letter at 4-5. While we find it fundamentally speculative that VoIP providers necessarily will choose to pursue the approach EarthLink proposes, we note in any event that we find it unlikely that the merged entity would have the incentive to engage in such conduct.

⁴²¹ See, e.g., Broadwing and SAVVIS Wilkie Decl. at para. 6 (noting the excess capacity held by Internet backbone providers).

⁴²² EarthLink, for example, asserts that a backbone provider might assign competing VoIP traffic to a "queue" that results in those packets being delivered only after all the other queues are empty. EarthLink Collins Decl. at para. 7. To the extent that there is excess capacity, however, the other queues will quickly empty, and there will be little or no delay for the competing VoIP traffic, absent some affirmative efforts to delay that traffic. Cf. *id.* (noting that the backbone provider might choose to implement this queuing process only in certain circumstances, such as high-traffic periods).

⁴²³ See SBC Oct. 31 *Ex Parte* Letter, Attach. at 4; see also Appendix F.

⁴²⁴ See, e.g., Broadwing and SAVVIS Petition at 52-53; CompTel/ALTS Petition at 33; Consumer Federation *et al.* Petition at 24; Global Crossing Comments at 6, 9; BT Americas White Paper at 13-14.

⁴²⁵ See discussion *supra* at Part V.B (Wholesale Special Access Competition).

1. Relevant Markets

a. Relevant Product Markets

147. The Commission previously has identified wholesale domestic, interstate, interexchange (*i.e.*, long distance) services as a separate product market,⁴²⁶ although it has not always found it necessary to conduct a separate analysis of that product market.⁴²⁷ In light of concerns raised by some commenters, we address here the impact of the proposed merger on the market for wholesale long distance services.

b. Relevant Geographic Markets

148. Consistent with our definition of the relevant geographic markets for retail enterprise and retail mass market services,⁴²⁸ we conclude that the relevant geographic market for wholesale long distance services is the customer's location.⁴²⁹ We then aggregate locations where customers face similar competitive choices. Since all the major providers of wholesale long distance services have nationwide networks,⁴³⁰ we can aggregate customers of wholesale long distance service who are located throughout the United States. Moreover, wholesale long distance customers generally need to connect to the wholesale long distance provider at multiple locations throughout the United States. Consequently, we find it appropriate to aggregate customer locations and evaluate wholesale long distance services at the national level.⁴³¹

2. Competitive Analysis

149. The record does not support the contention of some commenters that the Applicants, unilaterally or in conjunction with the proposed Verizon/MCI entity, will be able to exercise market power to discriminate against retail competitors by withdrawing, in whole or in part, from the wholesale long

⁴²⁶ See, e.g., *WorldCom/MCI Order*, 13 FCC Rcd at 18041-42, para. 28.

⁴²⁷ *Id.*

⁴²⁸ See *supra* Parts V.C (Retail Enterprise Competition), V.D (Mass Market Competition).

⁴²⁹ We note that individual customers of wholesale long distance services are, like larger, multi-location enterprise customers, likely to require access to service at multiple geographic locations, often throughout the United States or a region thereof. See *supra* Part V.C (Retail Enterprise Competition).

⁴³⁰ See, e.g., Jeff Halpern, U.S. Telecom: Wholesale Segment is Declining, but Still Significant at 2 (Bernstein Research, 2005) (Bernstein Wholesale Report), in Letter from Peter J. Schildkraut, Counsel for SBC, to Gary Remondino, Wireline Competition Bureau, FCC, WC Docket No. 05-65 (filed June 6, 2005) ([REDACTED]); AT&T Info Req., ATT598001453-78 at 598001453-72 ([REDACTED]).

⁴³¹ We note that this approach is consistent with our definition of the relevant geographic markets for larger multi-location enterprise customers with a nationwide presence and for Tier 1 Internet backbone providers. See *supra* Parts V.C (Retail Enterprise Competition), V.E (Internet Backbone Competition). We reject the suggestion that the Commission examine specific routes in the SBC region on which AT&T and SBC have overlapping facilities. See Qwest Bernheim Decl. at para. 51; CompTel/ALTS Reply at 7 n.27; Cox Comments at 15-16. First, SBC currently does not own any long distance facilities in or out of its region, but instead purchases and resells long distance transport from independent providers such as WilTel. See SBC Info. Req. at 79. The merger will not, therefore, result in ownership of overlapping long distance facilities in the SBC region. Further, the merger will not lead to horizontal concentration on those routes where AT&T is currently the sole provider of interexchange transport.

distance market or by providing wholesale long distance service on discriminatory terms or conditions.⁴³² The record suggests that AT&T accounts for a declining portion of wholesale long distance revenues and minutes of transport due to significant competition from multiple other facilities-based long distance service providers.⁴³³ The evidence of wholesale long distance competition is consistent with prior Commission findings that Sprint, Qwest, Level 3, and others have a significant presence in this market.⁴³⁴ As a result, the Applicants' ability to discriminate against their retail competitors will be highly constrained, contrary to the concerns of some commenters.⁴³⁵ Further, as the Commission has found previously, it would not be economically rational for the Applicants to attempt to discriminate against rival providers of retail long distance service if the wholesale market is highly competitive and there are numerous competing wholesale providers ready and able to supply those rivals.⁴³⁶

150. The evidence in the record further demonstrates that there is significant spare capacity in this market.⁴³⁷ In addition, the evidence shows that this industry segment faces increasing pressure from the migration of minutes to packet-switched voice services, Internet-based applications, and other technological substitutes,⁴³⁸ suggesting further reductions in AT&T's presence in this market and increasing excess capacity by its competitors. Indeed, given that SBC currently represents approximately

⁴³² See, e.g., United States Cellular Comments at 3-4, Independent Alliance Comments at 2-4; T-Mobile Reply at 12-14.

⁴³³ AT&T Info. Req., ATTFCC02257-313 ([REDACTED]).

⁴³⁴ See, e.g., Bernstein Wholesale Report at 2 ([REDACTED]); AT&T Info Req., ATT598001453-78 at 598001453-72 ([REDACTED]); see also *AT&T Non-Dominance Order*, 11 FCC Rcd at 3308, paras. 70, 72; *WorldCom/MCI Order*, 13 FCC Rcd at 18052-56, 18066-7, paras. 43-50, 70. Because we find there exists sufficient excess capacity in this market, we decline to impose non-structural conditions such as those suggested by United States Cellular and T-Mobile. See United States Cellular Comments at 2-5; T-Mobile Reply at 13-14.

⁴³⁵ See *supra* note 432. We reject as fundamentally speculative commenters' concerns that other BOCs will acquire the remaining independent facilities-based interexchange carriers. See ACN *et al.* Aug. 10 *Ex Parte* Letter, Attach. at 6. No such mergers are pending before the Commission and, in any event, the Commission could address any concerns arising from such mergers when, and if, they are presented to the Commission for approval.

⁴³⁶ See *WorldCom/MCI Order*, 13 FCC Rcd at 18066-67, para. 70 ("[E]ven a long distance carrier with a large retail customer base will have an incentive to provide wholesale services to resellers if the reseller can obtain these services on favorable terms from other providers.") (footnote omitted). For the same reasons, we find the concerns of United States Cellular regarding the sharing of "call detail" or other "competitively sensitive information" between AT&T, SBC and their wireless affiliate unconvincing. See United States Cellular Comments at 3. To the extent United States Cellular or other parties have concerns, they should be able to negotiate an appropriate arrangement with a competitive provider of wholesale long distance services. Further, although United States Cellular has not identified the nature of the information it seeks to protect with great specificity, we note that § 222(b) of the Act provides all carriers with certain protections. See 47 U.S.C. § 222(b).

⁴³⁷ See, e.g., Bernstein Wholesale Report at 2 ([REDACTED]); Level 3 Communications, Inc., SEC Form 10-K at 18 (filed March 16, 2005) ("The result of [high competitive entry] was an oversupply of capacity and an intensely competitive environment.") available at <http://www.sec.gov/Archives/edgar/data/794323/000104746905006668/a2153221z10-k.htm>; Leucadia National Corp., SEC Form 10-K at 44 (filed March 14, 2005) (stating that "telecommunications capacity far exceeds actual demand and the marketplace is characterized by fierce price competition. . .") (Leucadia 2005 10-K), available at http://www.sec.gov/Archives/edgar/data/96223/000090951805000159/jd3-14_new10k.txt.

⁴³⁸ See, e.g., Bernstein Wholesale Report at 2-3; AT&T Info. Req., ATTFCC02915-51 at 02932-34.

70 percent of WilTel's long distance revenue, the migration of SBC's long distance traffic to the AT&T network will free significant capacity on the network of a national facilities-based wholesale long distance provider.⁴³⁹ Therefore, there should be more than sufficient capacity among the remaining independent providers of facilities-based wholesale long distance services to accommodate any carrier that cannot obtain satisfactory service from the Applicants.⁴⁴⁰ This evidence of continued competition from a variety of wholesale interexchange service providers convinces us that the merger is unlikely to result in anticompetitive effects through either unilateral effects or coordinated interaction.

151. Finally, the record does not support the contention of some commenters that the Applicants, unilaterally or in conjunction with the proposed Verizon/MCI entity, will adversely affect the viability of the wholesale interexchange market by eliminating SBC as a purchaser of wholesale long distance services.⁴⁴¹ While the merger likely will gradually eliminate SBC as a purchaser of wholesale long distance service over the next five years,⁴⁴² this primarily will impact only WilTel, SBC's primary wholesale provider of long distance services – not the market as a whole.⁴⁴³ Further, as this process will take some time, affected carriers will have an opportunity to seek other customers.⁴⁴⁴ As the Commission has noted previously, “[o]ur statutory duty is to protect efficient competition, not competitors.”⁴⁴⁵

152. Based on the foregoing, we find that the merger is not likely to result in anticompetitive effects in the wholesale segment of the domestic, interstate, interexchange market.

G. U.S. International Services Competition

153. In this section we consider the competitive effects of the proposed merger in the markets for U.S. international services.⁴⁴⁶ We conclude that the merger is not likely to result in anticompetitive

⁴³⁹ Leucadia 2005 10-K at 2, 10-11 (“SBC Communications Inc. (‘SBC’), a major communications provider in the U.S., is WilTel’s largest customer, accounting for 70% of the Network segment’s 2004 operating revenues. On January 31, 2005, SBC announced that it would buy AT&T Corp., and announced its intention to migrate the services provided by WilTel to the AT&T network.”).

⁴⁴⁰ Qwest Bernheim Decl. at para. 54 (“Even with [the SBC/AT&T and Verizon/MCI] mergers, significant independent long distance transport capacity would remain.”).

⁴⁴¹ See, e.g., ACN *et al.* Comments at 29-30; CompTel/ALTS Reply at 6; CompTel/ALTS Reply, Reply Declaration of Lee L. Selwyn (CompTel/ALTS Selwyn Reply Decl.) at paras. 29-32.

⁴⁴² See SBC SEC Form 8-K (filed June 15, 2005) available at <http://www.sec.gov/Archives/edgar/data/732717/000073271705000325/wiltel.htm>; Leucadia National Corp., SEC Form 8-K at 1 (filed January 25, 2005).

⁴⁴³ SBC/AT&T Reply at 79-80.

⁴⁴⁴ Leucadia 2005 10-K at 44 (“WilTel expects it will take anywhere from two to three years from now for SBC to migrate all of its traffic off of WilTel’s network, and anticipates that it will continue to provide some level of service to SBC into 2007.”)

⁴⁴⁵ *Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Company*, File Nos. 00762-CL-AL-1-95 through 00803-CL-AL-1-95; 00804-CL-TC-1-95 through 00816-CL-TC-1-95; 00817-CL-AL-1-95 through 00824-CL-AL-1-95; and 00825-CL-TC-1-95 through 00843-CL-TC-1-95, Memorandum Opinion and Order, 12 FCC Rcd 22280, 22288, para. 16 (1997) (citing *SBC Communications, Inc. v. FCC*, 56 F.3d 1484, 1491-92 (D.C. Cir. 1995)).

⁴⁴⁶ U.S. international services consist of all U.S.-billed telecommunications services, including calls that originate in the United States and terminate at a foreign point and calls that originate at a foreign point but are billed by a U.S. (continued....)

effects for international services provided to mass market, enterprise or global telecommunications customers.

154. While there exist specific differences between domestic and international long distance telecommunications services, both types of services reflect fundamental similarities. As with access to domestic long distance telecommunications, mass market customers may presubscribe to a stand-alone domestic long distance telecommunications carrier that includes access to international telecommunications services; select a provider of bundled local and long distance service that includes access to international long distance telecommunications; or use prepaid calling cards, dial-around carriers, VoIP carriers, or wireless telecommunications carriers. In contrast to domestic long-distance service, however, mass market customers of international long distance telecommunications generally appear more willing to access carriers other than their presubscribed carrier through the use of prepaid calling cards and dial-around services.

155. The expressed preferences of international mass market telecommunications users reflect several distinct attributes of international telecommunications that differ from domestic long distance telecommunications. Specifically, because international routes differ in terms of traffic capacity, competition, and government regulation, the wholesale cost and consequently retail price of calls to different international destinations vary. For example, the cost to terminate international services – the settlement rate – varies for each market and is usually higher than that for domestic services. Because of this, consumer preferences for access to international long distance telecommunications will differ from consumer preferences for domestic long distance telecommunications, notwithstanding the fact that the *same* modes of access are available for either domestic or international long distance telecommunications.

156. There generally appear to be few barriers to entry into the international long distance telecommunications industry for either facilities-based or resale entrants. Resale entrants, in particular, face relatively modest costs of market entry as evidenced by the presence of approximately 770 international telecommunications resellers. These low entry barriers make it unlikely that SBC will be able to raise price or restrict output after the merger.

157. We examine below three separate end-user product markets: the mass market, enterprise market, and global telecommunications market. We also separately examine the international transport capacity market, which provides the physical transmission path that carriers use to deliver services in the end-user markets, and two wholesale, or intermediate, markets, namely facilities-based international message telecommunications service (IMTS) and private line service. Input markets, particularly international transport capacity, are a significant component of the international services market. Wholesale markets for international service also are essential components to the delivery of end-user retail services. We also examine the Applicants' affiliations with foreign carriers.

(Continued from previous page) _____

carrier, such as international calling card or prepaid card calls. This proceeding includes thirteen applications to transfer control of licenses and authorizations covering the provision of U.S. international services and the underlying facilities used to provide them: eight international 214 authorizations, one submarine cable landing license, one international public fixed license, and three earth station authorizations. See File Nos. ITC-T/C-20050222-00079, ITC-T/C-20050222-00080, ITC-T/C-20050222-00081, ITC-T/C-20050222-00082, ITC-T/C-20050222-00083, ITC-T/C-2005022-00071, ITC-T/C-2005022-00072, ITC-T/C-2005022-00073 (International Section 214 Applications); SCL-T/C-20050222-00002 (Submarine Cable Application); SES-T/C-20050224-00233 (International Public Fixed Application); SES-T/C-20050224-00230, SES-T/C-20050224-00231, SES-T/C-20050224-00232 (Earth Station Applications).

1. International Transport Market

158. International transport refers to the international physical transmission paths carriers use to offer services between the United States and other countries. International traffic can be transmitted via submarine cable, satellite or terrestrial links. Most U.S. international traffic, however, is transmitted over submarine cables.⁴⁴⁷ We need not conduct an analysis of the international transport market here, however, because neither SBC nor any of its affiliates own or control international facilities.⁴⁴⁸ Rather, these carriers only provide international service through the resale of other carriers' facilities.⁴⁴⁹ The Applicants specifically state that SBC holds no interests in submarine cable landing licenses and no indefeasible rights of use or other ownership interest in any international submarine cable.⁴⁵⁰ Moreover, no commenter has contested this assertion, and we have no other evidence to suggest that SBC may control such ownership interests. Further, we note that neither AT&T nor SBC holds any ownership interest in satellite systems or satellite transponder capacity. Accordingly, we find that the merger will not likely have anticompetitive effects in the market for international transport capacity.

2. Intermediate Facilities-Based Markets

159. IMTS consists of telecommunications services provided over the public switched networks of U.S. international carriers. In recent years, IMTS has evolved into a two-sector industry – a wholesale sector in which carriers can buy and sell bulk IMTS minutes and a retail sector in which carriers sell minutes to “end-users.” Wholesale IMTS minutes are ultimately provided by facilities-based U.S. international carriers that terminate those minutes over their own networks through interconnection agreements with their foreign correspondents.⁴⁵¹ Because SBC does not provide facilities-based IMTS, the merger will not increase concentration in these markets. Therefore, we do not analyze the wholesale facilities-based market as a part of this merger analysis. Similarly, because SBC does not provide international private line service, we need not analyze the international private line services market.

⁴⁴⁷ In 2003, submarine cables accounted for 80% of the overall active transmission capacity. Terrestrial links accounted for 18% and satellites for 1%. See International Bureau, FCC, 2003 Section 43.82 *Circuit Status Data*, at 13, Table 2, 19, Table 3, and 25, Table 4 (Dec. 2004) (2003 *Circuit Status Report*) available at www.fcc.gov/ib/pd/pf/csmanual.html; International Bureau Releases 2003 Year-End Circuit Status Report for U.S. Facilities-Based International Carriers; Capacity Use Shows Healthy Growth, News Release (IB Dec. 23, 2004), at 1.

⁴⁴⁸ A traditional analysis of the international transport market would focus on submarine cable capacity because most international service is transmitted over submarine cables, but it would also look at satellite capacity and the terrestrial links on the U.S.-Canada and U.S.-Mexico routes. See, e.g., *WorldCom/MCI Order*, 13 FCC Rcd at 18072-74, paras. 82-85.

⁴⁴⁹ SBC Info. Req. at 126.

⁴⁵⁰ SBC/AT&T Application at 115.

⁴⁵¹ Approximately 80% of all facilities-based IMTS minutes are sold to other carriers, which then resell them to end users or to other resellers. See Strategic Analysis and Negotiations Division, International Bureau, FCC, 2003 *International Telecommunications Data* at 1 (January 2005) (2003 Section 43.61 *Report*) available at <http://www.fcc.gov/ib/sand/mniab/traffic/>. U.S. facilities-based carriers also sell IMTS services to foreign carriers, many of which find it profitable to terminate their international calls to third countries via the United States.

3. End-User Markets

a. Mass Market

160. The mass market for international telecommunications services consists of international telecommunications services sold directly to residential and small business customers. The primary suppliers of such services are facilities-based IMTS carriers and IMTS resellers.⁴⁵² We find that the market is not highly concentrated and that the merger is not likely to have anticompetitive effects. We also find that structural characteristics of the IMTS mass market facilitate entry and will ensure that the market remains competitive.

161. As discussed above, a mass market customer's presubscribed interexchange carrier and/or wireless carrier will be the presubscribed carrier for both the domestic and international long distance calls placed by that customer.⁴⁵³ Presubscription, however, is not as important a factor in a consumer's choice of an IMTS provider as it is for determining his choice of a domestic long distance provider. Because international calls are relatively more expensive than domestic long distance calls, consumers who use a large amount of international telecommunications services often choose IMTS providers other than their presubscribed carrier by using "dial-around" service or prepaid calling cards, which often are significantly less expensive.⁴⁵⁴ The facts that IMTS resale comprises such a large portion of IMTS minutes, and dial-around carriers and prepaid cards make up a high proportion of IMTS resale, suggest that many consumers approach IMTS as an "a la carte" service often purchased from providers other than their presubscribed carrier, including independent resellers.⁴⁵⁵

162. In addition, the IMTS mass market is not highly concentrated. There are approximately 40 facilities-based carriers and approximately 770 resellers providing IMTS service. Many of these carriers offer service on all or most international routes and sell directly to residential and small business customers. Major market participants include MCI, AT&T, IDT Corporation, and Sprint, as well as a number of other highly active, facilities-based carriers and resellers.⁴⁵⁶ Within the last several years, AT&T, MCI, and Sprint have begun focusing on the provision of wholesale IMTS to resale carriers. Many smaller, highly competitive resellers also have entered in recent years to compete against the traditional carriers in the provision of mass market IMTS. As a result, the traditional international carriers no longer hold the substantial market shares in the IMTS mass market that they once held. Although SBC has the most presubscribed lines of any carrier within its footprint, SBC operates

⁴⁵² Although we cannot identify precisely which VoIP providers should be included in the same market as mass market IMTS, we nevertheless find that certain VoIP providers should be included as participants in this market. *Cf. supra* Part V.D (Mass Market Competition). We further find that wireless providers of IMTS should be included in this market.

⁴⁵³ See *supra* Part V.D (Mass Market Competition).

⁴⁵⁴ Based on a study in the record of this proceeding, international prepaid minutes constituted approximately [REDACTED]% of total end-user international minutes for 2003. See, e.g., *Atlantic ACM Excerpt* at 9; 2003 Section 43.61 Report (sum of world total minutes in Tables 41 and 42).

⁴⁵⁵ In 2003, U.S. end-user customers purchased approximately 37 billion IMTS minutes. See 2003 Section 43.61 Report, Tables 41 and 42. Resellers reported approximately 35 billion IMTS minutes in 2003, although this figure includes substantial double-counting. *Id.* at Table D. Resold IMTS is mostly, but not entirely, provided as a non-presubscribed service, such as prepaid calling cards or "dial-around."

⁴⁵⁶ See 2003 Section 43.61 Report, Tables A, D.

exclusively as a reseller in the IMTS mass market [REDACTED].⁴⁵⁷ The fact that SBC sold only [REDACTED]⁴⁵⁸ minutes in 2004 is evidence that it possesses only a limited share of mass market IMTS within its footprint.⁴⁵⁹ Given such a competitively dynamic environment, we find that the merger is not likely to result in anticompetitive effects in the IMTS mass market.

163. We also find that various structural characteristics of the IMTS mass market will ensure that the market remains competitive. As explained above, mass market IMTS customers have multiple access channels through which to obtain international service, including calling plans offered by their presubscribed long distance carrier, “dial-around” services, prepaid calling cards, as well as important emerging access channels such as discounted international calling plans offered by wireless carriers and VoIP providers. In addition, as discussed above, there are no significant barriers to entry in the provision of mass market IMTS. For facilities-based providers, substantial international transport capacity exists in all regions and foreign termination services are available on virtually every route. Because facilities-based IMTS minutes are a crucial input for resellers, their wide availability will continue to sustain a highly active resale sector. Indeed, the presence of approximately 770 resellers nationwide demonstrates that successful entry into the IMTS mass market is feasible even for smaller, non-facilities-based carriers.

b. Enterprise Market

164. The enterprise market for international telecommunications services consists of international telecommunications services sold directly to medium and large business customers. As discussed above in the context of domestic enterprise services, we find that medium and large enterprise customers are sophisticated purchasers of telecommunications services likely to make informed choices based on expert advice about service offerings and prices. As we concluded above, so long as no structural barriers prevent carriers from offering services to such customers, they will seek out best-priced alternatives.⁴⁶⁰ Further, SBC states that it generally does not compete for businesses where more than half of the customers’ locations are outside the SBC footprint or where more than 20 percent of the customer’s traffic is international.⁴⁶¹ In light of these facts and the fact that SBC does not provide facilities-based international services, we conclude that SBC’s merger with AT&T is not likely to result in anticompetitive effects.

⁴⁵⁷ SBC Info. Req. at 174-75, 178 (unredacted).

⁴⁵⁸ SBC Info. Req., Exh. 21(b)(3).

⁴⁵⁹ An extremely rough upper bound on SBC’s market share can be derived as follows: Nationwide, end-user IMTS minutes totaled approximately 37 billion minutes in 2003. *See 2003 Section 43.61 Report*, Tables 41, 42. Reflecting growth in traffic, it is likely that volume grew to approximately 40 billion end-user IMTS minutes in 2004. The proportion of residential and small business minutes to total end-user minutes is approximately 60%, so that the residential market in 2004 consists of approximately 24 billion minutes nationwide. Because SBC has approximately 31% of total U.S. local loops in its footprint, we estimate that approximately 7.4 billion residential minutes were sold by all carriers in the SBC footprint in 2004. As mentioned above, SBC reported [REDACTED] end-user minutes in 2004. *See supra* note 458. If all of SBC’s minutes are residential and small business minutes (*i.e.*, if SBC sells *no* IMTS to large businesses) then it has approximately [REDACTED]% of the mass market in its footprint. This is an upper limit on SBC’s mass IMTS market share.

⁴⁶⁰ *See supra* Part V.C (Retail Enterprise Competition).

⁴⁶¹ SBC/AT&T Kahan Decl. at para. 27.

c. Global Telecommunications Services

165. The global telecommunications services (GTS) market, also known as the global seamless services market, is a segment of the enterprise market that is focused on large multi-national customers that require connectivity to multiple locations throughout the world, not just within the United States. These customers are generally large multi-national corporations that have significant expertise in telecommunications issues.⁴⁶² The Commission has defined the global seamless services market as “a combination of voice, data, video, and other telecommunications services that are offered by a single source or multiple sources over an integrated global or regional international network of owned or leased facilities, and that have equivalent (though not identical) quality, characteristics, features, and capabilities wherever they are provided.”⁴⁶³

166. We are not persuaded by BT Americas’ claims that the proposed transaction will result in anticompetitive effects in the provision of global telecommunications services.⁴⁶⁴ BT Americas’ primary argument is that the merger would increase SBC’s control over special access services for enterprise networks, a critical input for GTS.⁴⁶⁵ We have already addressed the wholesale special access issue in this Order.⁴⁶⁶ We do not find any unique characteristics with respect to the application of special access to GTS that warrant a different conclusion as to that market.

167. We also reject the contention of BT Americas and CompTel/ALTS that the merger will remove a potential competitor in the GTS market.⁴⁶⁷ The Applicants claim that the merger raises no horizontal concerns with respect to GTS. Specifically, they assert that SBC should not be considered a significant potential entrant into GTS given that SBC has limited international operations, assets, and expertise, and has concentrated on serving domestic U.S. business customers with locations predominantly located within its footprint. The Applicants also note that SBC does not attempt to win bids when 20 percent or more of the traffic involved is international.⁴⁶⁸ Since SBC has limited international operations, we find that SBC does not have a unique competitive advantage as a potential entrant in the GTS market. To the extent that SBC could serve to constrain the exercise of market power as an entrant, other firms, some with more international assets and operations, and thus more suited to entry into the GTS market than

⁴⁶² See *AT&T/British Telecom Order*, 14 FCC Rcd at 19151-57, paras. 22-39.

⁴⁶³ *AT&T/British Telecom Order*, 14 FCC Rcd at 19153, para. 28; see also, e.g., *Sprint Corporation, Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended*, File No. I-S-P-95-002, Declaratory Ruling and Order, 11 FCC Rcd 1850, 1864, para. 84 (1996) (*Sprint Declaratory Ruling*); *United States v. Sprint Corp.*, Civil Action No. 95-1304, Complaint at paras. 18, 29, 39 (D.D.C. filed July 13, 1995) (defining market of “seamless international telecommunications services” that is distinct for purposes of antitrust law).

⁴⁶⁴ See generally BT Americas Reply at 3-21; see also CompTel/ALTS Petition at 25 (stating that the merger would harm consumers by eliminating SBC as a significant new competitor of AT&T in the provision of global enterprise services, at least within SBC’s footprint).

⁴⁶⁵ BT Americas Reply at 7-20.

⁴⁶⁶ See *supra* Part V.B (Wholesale Special Access Competition).

⁴⁶⁷ BT Americas Reply at 3-7; see also CompTel/ALTS Petition at 25 (stating that the merger would harm consumers by eliminating SBC as a significant new competitor of AT&T in the provision of global enterprise services, at least within SBC’s footprint).

⁴⁶⁸ See SBC/AT&T June 2 *Ex Parte* Letter at 4; SBC/AT&T Kahan Decl. at para. 27.

SBC, would continue to exert a restraining influence, or, if entry would become profitable, would recognize the opportunity to enter. For these reasons we also are not persuaded that the SBC/AT&T merger, taken in combination with the proposed merger of Verizon and MCI, would likely result in anticompetitive effects in the GTS market.

4. Foreign Carrier Affiliations

168. As a part of our public interest analysis under section 214(a) of the Act, we also consider whether, upon consummation of the proposed transfers of control, the international section 214 authorization holders will become affiliated with a foreign carrier that has market power on the foreign end of a U.S. route that the international section 214 authorization holders have the authority to serve pursuant to the authorizations that will be transferred.⁴⁶⁹ Under rules adopted in the *Foreign Participation Order*, the Commission classifies a U.S. carrier as “dominant” on a particular international route if it is, or is affiliated with, a foreign carrier that has market power on the foreign end of that route.⁴⁷⁰ Similarly, under section 1.767(a)(8) and (a)(11) and section 1.768 of the Commission’s rules, a submarine cable licensee that proposes to transfer control of an interest in a submarine cable landing license granted pursuant to the Cable Landing License Act is required to disclose if it will become affiliated with a foreign carrier as a result of the transfer of control.⁴⁷¹ The Commission applies competitive safeguards to a cable landing license held by a licensee that is, or is affiliated with, a carrier with market power in relevant input markets on the foreign end of the cable that could result in harm to competition in the U.S. market.⁴⁷² Neither SBC nor AT&T is currently affiliated with any foreign carrier

⁴⁶⁹ 47 U.S.C. § 214(a). For international section 214 applicants, the terms “affiliated” and “foreign carrier” are defined in section 63.09 of the Commission’s rules. 47 C.F.R. § 63.09.

⁴⁷⁰ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23969-70, 23987, 23991-99, paras. 177-78, 215, 221-39 (1997) (*Foreign Participation Order*). A carrier classified as dominant on a particular U.S. international route due to an affiliation with a foreign carrier that has market power on the foreign end of the route is subject to specific international dominant carrier safeguards set forth in section 63.10 of the rules. See 47 C.F.R. § 63.10(c), (e). These safeguards are designed to address the possibility that a foreign carrier with control over facilities or services that are essential inputs for the provision of U.S. international services could discriminate against rivals of its U.S. affiliates. In the *Foreign Participation Order*, the Commission concluded that these safeguards, in conjunction with generally applicable international safeguards, are sufficient to protect against vertical harms by carriers from World Trade Organization (WTO) Member countries in virtually all circumstances. In the exceptional case where an application poses a very high risk to competition in the U.S. market – where the standard safeguards and additional conditions would be ineffective – the Commission reserves the right to deny the applications. *Foreign Participation Order*, 12 FCC Rcd at 23913-14, para. 51.

⁴⁷¹ 47 C.F.R. §§ 1.767(a)(8), (a)(11), 1.768; see also 47 U.S.C. §§ 34-39; Exec. Ord. No. 10530 § 5(a), reprinted as amended in 3 U.S.C. § 301. For submarine cable applicants, the terms “affiliated” and “foreign carrier” are defined as in § 63.09 of the Commission’s rules, 47 C.F.R. § 63.09, except that the term “foreign carrier” also shall include any entity that owns or controls a cable landing station in a foreign market. See Note to § 1.767, 47 C.F.R. § 1.767.

⁴⁷² 47 C.F.R. § 1.767(l), 1.768(f); see also *Submarine Cable Report and Order*, 16 FCC Rcd at 22180, para. 25. Relevant foreign carrier input markets include those facilities or services for the landing, connection, or operation of submarine cables. *Submarine Cable Report and Order*, 16 FCC Rcd at 22180, para. 23. The Commission found that these competitive safeguards should be sufficient in all but the most exceptional of circumstances to detect and deter any anti-competitive behavior associated with market power in WTO Member markets where U.S.-licensed cable systems land and operate. *Id.*

that has market power on the foreign end of a U.S.-international route.⁴⁷³ We therefore need not impose our dominant carrier safeguards as part of our approval of the merger.⁴⁷⁴

169. Both SBC and AT&T have ownership interests in foreign carriers that compete in Mexico, the second largest U.S.-international route.⁴⁷⁵ SBC has an ownership interest in, and a close working relationship with, Telefonos de Mexico, S.A. de C.V. (Telmex) and its affiliates.⁴⁷⁶ AT&T has an ownership interest in Alestra S. de R.L. de C.V. (Alestra), which provides service in Mexico under the AT&T brand name, and also has two indirect subsidiaries that provide service in Mexico – AT&T Global Network Services Mexico S. de R.L. de C.V. (AGNS Mexico) and AT&T de Mexico S.A. de C.V. (AT&T Mexico).⁴⁷⁷ Each of these carriers competes directly with Telmex.⁴⁷⁸ Neither carrier is classified as dominant on the U.S.-Mexico route, however. Although Telmex is the incumbent carrier and has market power in Mexico,⁴⁷⁹ SBC's ownership interest is below the threshold to be considered an affiliate of Telmex. Alestra, AGNS, and AT&T Mexico do not have market power in Mexico. Consequently, the dominant carrier safeguards do not currently apply to AT&T or SBC on the U.S.-Mexico route. SBC's ownership interest in Telmex will not increase due to the merger and therefore dominant carrier status will continue not to be applicable.

170. We do not find any evidence in the record that demonstrates that this merger will likely have anticompetitive effects for U.S. consumers on the U.S.-Mexico route. However, if in the future we find, based on an investigation initiated by a complaint or on our own initiative, that the combined SBC/AT&T is acting in an anti-competitive manner on the U.S.-Mexico route, or any other U.S.-international route, we have the authority to take appropriate actions to protect U.S. consumers.⁴⁸⁰

⁴⁷³ See SBC/AT&T Application at 115.

⁴⁷⁴ Under the rules, the carriers must notify the Commission if they subsequently become affiliated with a foreign carrier. 47 C.F.R. §§ 1.768, 63.11. If that foreign carrier has market power on the foreign end of the relevant U.S.-international route, the safeguards will apply. See 47 C.F.R. §§ 1.767(l), 63.10(c).

⁴⁷⁵ 2003 Section 43.61 Report, Table A1 (in 2003 there were over 4.7 billion minutes of service on the U.S.-Mexico route).

⁴⁷⁶ SBC has an equity and voting interest in Telmex. SBC's interest in Telmex is held through a trust and under the Trust agreement, its shares must be voted in accordance with Carso Global Telecom, the controlling stockholder of Telmex, except regarding the election of the directors and the members of the Executive Committee. SBC has the right to appoint [REDACTED] out of the 18 members of the Telmex board of directors, and one member of the Executive Committee. SBC and Telmex have also entered into a Management Services Agreement. SBC Info. Req. at 169 -70 (unredacted). SBC has also entered into a Joint Marketing Agreement with Telmex USA, LLC, a wholly-owned subsidiary of Telmex, pursuant to which SBC assists Telmex USA in marketing two types of Telmex prepaid calling cards that bear the SBC logo. *Id.* at 166-67.

⁴⁷⁷ AT&T Info. Req. at 70-73.

⁴⁷⁸ *Id.* at 71-72.

⁴⁷⁹ See *The International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets*, Public Notice, 19 FCC Rcd 20385 (IB 2004).

⁴⁸⁰ See, e.g., 47 U.S.C. §§ 151, 201, 202, 203, 204, 205, 208, 214.

H. SBC's Qualifications to Acquire Control of AT&T's Licenses

171. As previously noted, section 310(d) of the Communications Act provides that no station license may be transferred, assigned, or disposed of in any manner except upon a finding by the Commission that the "public interest, convenience and necessity will be served thereby."⁴⁸¹ Among the factors that the Commission considers in its public interest inquiry is whether the applicant for a license or license transfer has the requisite "citizenship, character, financial, technical, and other qualifications."⁴⁸² Therefore, as a threshold matter, the Commission must determine whether the parties meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission's rules.⁴⁸³ In making this determination, the Commission does not, as a general rule, reevaluate the qualifications of transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing. In this proceeding, no issues have been raised with respect to the basic qualifications of AT&T, and we thus find that AT&T has the requisite qualifications. Conversely, section 310(d) requires the Commission to consider whether SBC, the proposed transferee, is qualified to hold a Commission license.⁴⁸⁴

172. The Commission has previously determined that, in deciding character issues, it will consider certain forms of adjudicated, non-FCC related misconduct that includes: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition.⁴⁸⁵ With respect to Commission-related conduct, the Commission has stated that it would treat any violation of any provision of the Act, or of the Commission's rules, as predictive of an applicant's future truthfulness and reliability and, thus, as having a bearing on an applicant's character qualifications.⁴⁸⁶ In prior merger orders, the Commission has used the Commission's character policy in the broadcast area as guidance in resolving similar questions in transfer of licenses proceedings.⁴⁸⁷

173. We disagree with commenters that we should reevaluate concerns regarding SBC's character qualifications that already were addressed and rejected in the *Cingular/AT&T Wireless Order*.⁴⁸⁸ We

⁴⁸¹ 47 U.S.C. § 310(d).

⁴⁸² *SBC/SNET Order*, 13 FCC Rcd at 21305, para. 26.

⁴⁸³ See 47 U.S.C. § 310(d); 47 C.F.R. §§ 1.948, 25.119.

⁴⁸⁴ See *SBC/BellSouth Order*, 15 FCC Rcd at 25465, para. 14.

⁴⁸⁵ *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20092-93, para. 236.

⁴⁸⁶ *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1209-10 at para. 57 (1986) (*Character Qualifications*), modified, 5 FCC Rcd 3252 (1990) (*Character Qualifications Modification*), recon. granted in part, 6 FCC Rcd 3448 (1991), modified in part, 7 FCC Rcd 6564 (1992) (*Further Character Qualifications Modification*); *MCI Telecommunications Corp.*, Order and Notice of Apparent Liability, 3 FCC Rcd 509 (1988) (stating that character qualifications standards adopted in the broadcast context can provide guidance in the common carrier context). The Commission has also determined that allegations that an applicant has engaged in unreasonable or anticompetitive conduct is relevant to the Commission's public interest analysis. *SBC/SNET Order*, 13 FCC Rcd at 21306-07, paras. 28-30.

⁴⁸⁷ See, e.g., *SBC/SNET Order*, 13 FCC Rcd at 21305, para. 26; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20092-93, para. 236; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21548-51, paras. 47-56; *Sprint/Nextel Order*, FCC 05-148 at paras. 24-25.

⁴⁸⁸ See, e.g., *Cbeyond et al. Comments* at 10-19; *Cox Comments* at 7-8; and *CompTel/ALTS Petition* at 50-59, 61-69; *EarthLink White Paper*, Apps. B1-B6.

likewise disagree with commenters who question SBC's character qualifications by pointing to the fact that SBC has entered into consent decrees with the Commission as a result of its past record of non-compliance with merger conditions and other rules intended to prevent anticompetitive behavior.⁴⁸⁹ The Commission has previously stated that consent decrees that are voluntarily entered into do not call into question a carrier's authority to hold Commission licenses and authorizations.⁴⁹⁰

174. We likewise reject the claims of commenters expressing concerns about SBC's character qualifications based on its exercise of its legal rights, such as petitioning courts and regulatory bodies.⁴⁹¹ As the Commission previously has concluded, an applicant's lawful exercise of its rights does not raise character concerns, even if the activity arguably has "the effect of delaying and minimizing the emergence of competition."⁴⁹²

175. We also do not agree with commenters' alleged character concerns based upon specific, unresolved disputes with the Applicants.⁴⁹³ Some of the alleged violations of the Act or Commission rules involve legal interpretations that would apply to numerous companies in the industry. The Commission has previously declined to address in merger proceedings matters for which the public interest would be better served by addressing the matter in the broader proceeding of general

⁴⁸⁹ See CompTel/ALTS Petition at 65-66 (raising new character concerns based on consent decrees that were not previously addressed in the *Cingular/AT&T Wireless Order*).

⁴⁹⁰ See *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21550, paras. 53-54. Furthermore, we disagree with CompTel/ALTS that we should consider the conduct leading up to a consent decree in determining an applicant's fitness to hold a Commission license. CompTel/ALTS Petition at 68-69. As we have stated before, "the Commission does not consider matters resolved in consent decrees adjudicated misconduct for the purposes of assessing an applicant's character qualifications." See *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21550, para. 53 (citing *1986 Character Qualifications Policy Statement*, 102 FCC 2d at 1205).

⁴⁹¹ See, e.g., ACN *et al.* Comments at 36 n.93 (petitioning state legislatures); Cox Comments at 7-8 (re-arbitrating issues before the California commission).

⁴⁹² *SBC/Ameritech Order*, 14 FCC Rcd at 14950, para. 571.

⁴⁹³ See, e.g., ACN *et al.* Comments at 74-75 (citing SBC's failure to negotiate section 271 access pursuant to the section 252 process); Broadwing and SAVVIS Petition at 32-33 (citing section 272 audit reports identifying minor differences in treatment); CompTel/ALTS Petition at 50-59 (citing SBC's pricing of section 271 switching); Global Crossing Comments at 22 n.55 (citing SBC's filing a voluntary TIPTop tariff for IP-enabled service providers); Telscape Comments at 6, 12 (citing SBC's offering temporary promotional pricing for winback purposes and its implementation of the *Triennial Review Remand Order*); Wisconsin Local Government Telecommunications Coalition Comments at 1-2 (stating that SBC has overcharged, misbilled, and used questionable business tactics in dealing with Wisconsin local government customers); Letter from Joshua H. Seidemann, Counsel for the Rural Alliance, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 5-6 (filed Sept. 22, 2005) (asserting that the Applicants will have advantages if a bill-and-keep system is adopted for intercarrier compensation); Letter from John M. Ryan, Assistant General Counsel/Senior Vice President, Level 3, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-65 at 1 (filed Apr. 26, 2005) (seeking clarification of intercarrier compensation rules applicable to VoIP services); Letter from Patrick J. Donovan, Counsel for Neutral Tandem, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75 at 1-3 (filed Oct. 14, 2005) (expressing concern that, post-merger, AT&T might terminate its direct connections with Neutral Tandem, based on the decision of a current SBC affiliate not to directly connect with Neutral Tandem); see also Telecom Consultants' Coalition (AT&T reporting of its enterprise contract prices, terms, and conditions).

applicability.”⁴⁹⁴ Moreover, we also note that many allegations concerning the Applicants’ conduct have been specifically rebutted by evidence proffered by the Applicants.⁴⁹⁵ We conclude that none of the foregoing allegations provides a basis for finding that SBC lacks the fitness to acquire licenses and authorizations currently held by AT&T.

176. We also do not believe that other, isolated adjudicated decisions against SBC are indicative of character concerns. We thus disagree that character concerns are raised by the California commission’s determination that SBC’s operations support system (OSS) did not meet applicable legal requirements or the section 271 violation by Ameritech.⁴⁹⁶ Faced with claims by Telscape that “viewed as a whole, the OSS structure and the way SBC-CA employs it create anticompetitive barriers,” the California commission found that while “aspects of SBC CA’s OSS implementation are not in compliance with SBC CA’s legal obligations,” the record did “not show that the problems are . . . pervasive or intractable,” and thus the California commission required only modest remedies.⁴⁹⁷ Given these conclusions, we do not believe that this decision demonstrates that SBC is unfit to acquire AT&T’s licenses. While a concern is raised by the section 271 violation, in which Ameritech partnered with interexchange carriers to offer a combined local and long distance service prior to receiving section 271 authority,⁴⁹⁸ we do not find that this past violation, standing alone, renders SBC unqualified to acquire AT&T’s licenses or raises a substantial and material question of fact warranting further inquiry.

I. Other Issues

177. We disagree with commenters that the loss of AT&T as an advocate for competitive LEC viewpoints in state and federal regulatory proceedings justifies our designating this merger for hearing.⁴⁹⁹

⁴⁹⁴ See *SBC/Ameritech Order*, 14 FCC Rcd 14950, para. 571; see also *SBC/SNET Order*, 13 FCC Rcd at 21306, para. 29.

⁴⁹⁵ See, e.g., *SBC/AT&T Reply* at 182-83 (unredacted) (noting that differences in treatment identified in a prior SBC section 272 audit could be attributable to a low number of observations, and that the more recent section 272 audit found no concerns that would warrant enforcement actions); *id.* at 189 (noting that the concerns about SBC’s TIPTop tariff cited by Global Crossing were based on the erroneous assumption that the tariffed offering was mandatory, rather than optional for IP-enabled service providers); *id.* at 190-91 (noting that the California Public Utility Commission recently rejected claims by Telscape that SBC’s winback promotional prices were predatory).

⁴⁹⁶ Telscape Comments at 11 (citing the California OSS decision, *Telscape Communications, Inc. v. Pac. Bell Tel. Co.*, Case No. 02-11.011, Decision No. 04-12-053, slip op. (Cal. P.U.C. Dec. 16, 2004) (*Telscape v. Pac. Bell*)); CompTel/ALTS Petition at 64 (citing the Ameritech section 271 violation, *In re MCI Telecomms. Corp. v. Ill. Bell Tel. Co.*, Memorandum Opinion and Order, 15 FCC Rcd 23184 (2000)). We note that Global Crossing also expresses concerns about SBC’s line splitting performance in Michigan, based on an article in *Communications Daily* noting allegations raised in the section 271 proceeding. Global Crossing Comments at 22 n.55. As SBC notes, the Commission subsequently rejected the competitive LECs’ complaints, and granted section 271 approval for Michigan. *SBC/AT&T Reply* at 189-90. Given the Commission’s rejection of the claims underlying the article cited by Global Crossing, we do not believe that it gives rise to character concerns.

⁴⁹⁷ *Telscape v. Pac. Bell* at 28.

⁴⁹⁸ *SBC/AT&T Reply* at 184-85.

⁴⁹⁹ See, e.g., CompTel/ALTS Petition at 41-47; NASUCA Comments at 16-17; New Jersey Ratepayer Advocate Comments at 23-34; Texas O.P.U.C. Comments at 6; Global Crossing Comments at 22-23, 25; United States Cellular Comments at 2. In particular, Global Crossing suggests that the Commission consider adopting a “baseball-style,” alternative dispute resolution process in this proceeding because the proposed merger will diminish the diversity of voices in the telecommunications public policy arena and dramatically widen the resource gap between (continued....)

As the Applicants point out, there will continue to be numerous competing carriers, trade associations, and other interested parties that remain free to express their positions in regulatory proceedings.⁵⁰⁰ Indeed, we note that dozens of commenters participated in the present proceeding, representing a variety of viewpoints.⁵⁰¹ Thus, we do not find that the loss of AT&T as an advocate of competitive LEC interests will unduly weaken the ability of competitors to participate and express their views in Commission and state proceedings.

178. Commenters similarly express concern about the loss of AT&T and SBC as carriers with significant leverage in negotiations for interconnection or for inputs used in retail services, which form the basis for agreements with smaller carriers.⁵⁰² With respect to interconnection arrangements, carriers are free to opt-in to interconnection agreements of other carriers, or to negotiate their own interconnection agreements subject to the right of arbitration as provided for by the Act.⁵⁰³ To the extent that commenters deem these procedures inadequate as a general matter, that is not appropriately addressed in the context of this merger review. With respect to wholesale inputs, we anticipate there continuing to be multiple purchasers and sellers, and reject the speculative concerns that small carriers will be increasingly disadvantaged as a result of the merger.

179. We reject NASUCA's claim that the Applicants should not only be required to comply with applicable section 272 requirements, but also that additional accounting, non-accounting, and auditing safeguards should be reinstated or imposed.⁵⁰⁴ The Applicants state that AT&T "will become a subsidiary of SBC, organized as a section 272 affiliate throughout SBC's region."⁵⁰⁵ Thus, the merger does not appear to raise concerns about compliance with SBC's applicable section 272 obligations.⁵⁰⁶ With respect to the additional safeguards, NASUCA cites concerns about special access discrimination as the underlying theory of harm to support such obligations. We discussed above other commenters'

(Continued from previous page)

SBC and its competitors. Global Crossing Comments at 25. To the extent that the resources required for Global Crossing to pursue a section 208 complaint against SBC outweigh the possible benefits in particular instances, this is not a merger-specific concern to be addressed in this proceeding. Moreover, as the Applicants note, it is not clear that Global Crossing's proposed alternative to the section 208 complaint process necessarily would be superior. SBC/AT&T Reply at 165-66.

⁵⁰⁰ SBC/AT&T Reply at 160-63.

⁵⁰¹ See Appendix A.

⁵⁰² See, e.g., Cox Comments at 3-4 (interconnection agreements); Independent Alliance Comments at 4 (wholesale inputs); Letter from Genevieve Morelli, Counsel for the California Association of Competitive Telecommunications Companies, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75, Attach. at 4-5 (filed May 16, 2005) (asserting that the SBC/AT&T and Verizon/MCI mergers, in conjunction, will shift the balance between incumbent LECs and the competitive industry).

⁵⁰³ 47 U.S.C. §§ 251, 252.

⁵⁰⁴ NASUCA Comments, Attach. at 49-51.

⁵⁰⁵ SBC/AT&T Reply at 166.

⁵⁰⁶ We note that we rejected above the competitive concerns that formed the basis for NASUCA's request for the re-imposition of section 271 or 272 requirements no longer applicable to SBC. See *supra* Part V.D (Mass Market Competition).

concerns about special access discrimination,⁵⁰⁷ and we likewise decline to impose NASUCA's proposed requirements in this proceeding.⁵⁰⁸

180. The State of Alaska expressed concern that certain federal and state obligations imposed on AT&T Alascom should continue post-merger.⁵⁰⁹ In response, the Applicants made the following commitments. First, they acknowledged that the merger does not change the carrier of last resort obligations imposed by the State of Alaska on interexchange services provided by Alascom. Second, they acknowledged that the merger will not alter the statutory and regulatory geographic rate averaging and rate integration rules that apply to Alascom. Finally, they committed to operate Alascom as a distinct, though not structurally separate, corporate entity for a period of at least two years.⁵¹⁰ Because we find these commitments will serve the public interest, we accept them and adopt them as conditions of our approval of the merger.

181. Finally, we reject the claims of APCC that the merger will harm competitively-owned payphone service providers (PSPs) through either discrimination against competitive PSPs or actions that will negatively affect payments to all payphone owners.⁵¹¹ We find these concerns speculative, and in any event we agree with the Applicants that concerns expressed by APCC are adequately addressed by existing law.⁵¹² Competitive payphone owners that believe the merged company has violated these rules or statutory requirements can avail themselves of the Commission's complaint process. Regarding APCC's concern that the combined company may fail to pay dial-around compensation on calls that are

⁵⁰⁷ See *infra* Part V.B.2.b (Wholesale Special Access Competition – Vertical Issues).

⁵⁰⁸ See NASUCA Comments at 49 (expressing concern about possible special access discrimination against retail competitors).

⁵⁰⁹ Alaska Comments at 2-3. For example, these obligations include certain state carrier of last resort obligations for interexchange offerings and federal geographic rate averaging and rate integration requirements pursuant to section 254(g) of the Act. SBC/AT&T Reply at 151.

⁵¹⁰ See SBC Oct. 31 *Ex Parte* Letter, Attach. at 4; see also Appendix F.

⁵¹¹ See generally APCC Petition, Attach. A competitively-owned payphone is one that is not owned by a LEC.

⁵¹² See, e.g., 47 C.F.R. § 64.1300 *et seq.*; *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 18 FCC Rcd 19975 (2003); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Reconsideration, 19 FCC Rcd 21457 (2004); see also 47 U.S.C. § 276(2) (stating that a BOC such as SBC “(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and (2) shall not prefer or discriminate in favor of its payphone service”). We also are not persuaded by APCC that the merged entity could use completed dial-around call volume information to “provide an unwarranted competitive advantage” to SBC's payphone affiliates. We note that to the extent that the information of concern to APCC constitutes “carrier proprietary information” within the meaning of section 222(b), or to the extent that SBC's conduct would have the effect of “prefer[ring]” its payphone service within the meaning of section 276(a)(2), the Act already prohibits the behavior about which APCC is concerned. See 47 U.S.C. §§ 222(b), 276(a)(2). Moreover, we conclude that the likelihood of harm expressed by APCC is remote. For example, APCC has not demonstrated a factual basis for its concern that the merged company would have the specific location information necessary to take action with respect to the call volume information.

routed at least partially in IP networks, we note that this issue is the subject of an ongoing proceeding, and is properly dealt with there.⁵¹³

VI. POTENTIAL PUBLIC INTEREST BENEFITS

A. Introduction

182. In addition to assessing the potential competitive harms of the proposed transaction, we also consider whether the combination of these companies' operations is likely to generate verifiable, merger-specific public interest benefits.⁵¹⁴ In doing so, we ask whether the combined entity will be able, and is likely, to pursue business strategies resulting in demonstrable and verifiable benefits that could not be pursued but for the combination. As discussed below, we find that the proposed transaction is likely to generate several significant merger-specific public interest benefits, although it is difficult to quantify precisely the magnitude of some of these benefits.

B. Analytical Framework

183. The Commission has recognized that "[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service or new products."⁵¹⁵ Under Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transfer outweigh the potential public interest harms.⁵¹⁶

184. There are several criteria the Commission applies in deciding whether a claimed benefit is cognizable. First, the claimed benefit must be transaction- or merger-specific. This means that the claimed benefit "must be likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects."⁵¹⁷ Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a merger is in the sole possession of the Applicants, they are required to provide sufficient evidence supporting each benefit claim so that the

⁵¹³ See *Pleading Cycle Established for Comments on American Public Communications Council's Petition For Declaratory Ruling and Rulemaking Regarding IP-Enabled Dial-Around Calls From Payphones*, Docket No. 05-176, Public Notice, DA 05-1106 (rel. Apr. 21, 2005).

⁵¹⁴ *Bell Atlantic /GTE Order*, 15 FCC Rcd at 14130, para. 209; *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 255; *WorldCom/MCI Order*, 13 FCC Rcd at 18134-35, para. 194.

⁵¹⁵ See *EchoStar/DirectTV Order*, 17 FCC Rcd at 20630, para. 188; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063, para. 158; see also *DOJ/FTC Guidelines* § 4.

⁵¹⁶ See *EchoStar/DirectTV Order*, 17 FCC Rcd at 20630, para. 188; *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 256; see also *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063, para. 157.

⁵¹⁷ *EchoStar/DirectTV Order*, 17 FCC Rcd at 20630, para. 189; see also *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063-64, para. 158 ("Pro-competitive efficiencies include only those efficiencies that are merger-specific, *i.e.*, that would not be achievable but for the proposed merger. Efficiencies that can be achieved through means less harmful to competition than the proposed merger . . . cannot be considered to be true pro-competitive benefits of the merger.") (footnote omitted); *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 255 ("Public interest benefits also include any cost saving efficiencies arising from the merger if such efficiencies are achievable only as a result of the merger. . ."); *AT&T/Comcast Order*, 17 FCC Rcd at 23313, para. 173 (Commission considers whether benefits are "merger-specific"); cf. *DOJ/FTC Guidelines* § 4.

Commission can verify the likelihood and magnitude of the claimed benefit.⁵¹⁸ In addition, as the Commission has noted, “the magnitude of benefits must be calculated net of the cost of achieving them.”⁵¹⁹ Furthermore, speculative benefits that cannot be verified will be discounted or dismissed. Thus, as the Commission explained in the *EchoStar/DirecTV Order*, “benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present.”⁵²⁰ Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost.”⁵²¹ The Commission has justified this criterion on the ground that, in general, reductions in marginal cost are more likely to result in lower prices for consumers.⁵²²

185. Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims. Under this sliding scale approach, where potential harms appear “both substantial and likely, the Applicants’ demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”⁵²³ On the other hand, where potential harms appear less likely and less substantial, as in this case, we will accept a lesser showing to approve the merger.

C. Enhancements to National Security and Government Services

186. We take considerations of national security extremely seriously, and we find that the merger has the potential to generate benefits arising from more efficient routing. Additionally, we believe that the combined, nonoverlapping, IP networks can provide the government with additional security and routing efficiency for vital and sensitive government communications.⁵²⁴

⁵¹⁸ *EchoStar/DirecTV Order*, 17 FCC Rcd at 20630, para. 190; see also *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063, para. 157 (“These pro-competitive benefits include any efficiencies arising from the transaction if such efficiencies . . . are sufficiently likely and verifiable . . .”); *AT&T/Comcast Order*, 17 FCC Rcd at 23313, para. 173 (Commission considers whether benefits are “verifiable”); *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 255; *DOJ/FTC Guidelines* § 4 (“[T]he merging firms must substantiate efficiency claims so that the Agency can verify by reasonable means the likelihood and magnitude of each asserted efficiency, how and when each would be achieved (and any costs of doing so), [and] how each would enhance the merged firm’s ability to compete. . . .”).

⁵¹⁹ *EchoStar/DirecTV Order*, 17 FCC Rcd at 20630, para. 190.

⁵²⁰ *Id.*

⁵²¹ *Id.* at 20631, para. 191; see also *DOJ/FTC Guidelines* § 4.

⁵²² See *EchoStar/DirecTV Order*, 17 FCC Rcd at 20631, para. 191; see also *DOJ/FTC Guidelines* § 4.

⁵²³ *EchoStar/DirecTV Order*, 17 FCC Rcd at 20631, para. 192 (quoting *SBC/Ameritech Order*, 14 FCC Rcd at 14825); cf. *DOJ/FTC Guidelines* § 4 (“The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”).

⁵²⁴ Because we find that the networks of SBC and AT&T largely are non-overlapping, see, e.g., *SBC/AT&T Reply* at 12 n.42 (pointing out that the Applicants’ networks have “very limited overlap on the East Coast and especially the greater Washington, D.C. area (where security needs are particularly concentrated), and virtually no overlap in global network capabilities used by many of AT&T’s national security customers”), we reject commenters’ concerns (continued....)

187. We agree with the Applicants that the merger will enhance service to U.S. government customers and strengthen U.S. national security. Both SBC and AT&T provide substantial telecommunications and technology services to federal and state government agencies involved in national security. We find that the merger will create a stable, reliable, U.S.-owned company that will provide improved service to government customers.⁵²⁵ The Applicants contend, and we agree, that the merger will strengthen SBC by transforming it into a strong, full-service, facilities-based provider capable of delivering integrated end-to-end services to the government on a national or international basis.⁵²⁶ Moreover, we find that the merger will help SBC improve communications security and network efficiency, which in turn should benefit national defense and homeland security.⁵²⁷

188. We reject commenters' arguments that the merger will not benefit national security or government customers. ACN *et al.* argue that we should discount the benefits of a unified network because the merger will bring end-to-end service to only a portion of the United States.⁵²⁸ Cbeyond *et al.* assert that AT&T is capable of conducting its government services business without the help of SBC, and that the merger will not result in any change in the quality of service provided to the government.⁵²⁹ Cbeyond *et al.* further argue that the merger will result in SBC's taking over AT&T's government contracts, which would undermine national security by overriding the government selection process.⁵³⁰ While we acknowledge that SBC's claimed benefits relating to end-to-end services are largely limited to SBC service territories, we nevertheless expect that benefits will result. Moreover, as discussed below, we find significant efficiencies arising from vertical integration, which are likely to improve the quality of services that SBC provides to government customers.⁵³¹

189. We also note the Applicants' commitments⁵³² in the *IP-Enabled Services* proceeding to meet the Commission's recently-adopted E911 obligations for interconnected VoIP services.⁵³³ Those requirements "extend our longstanding and continuing commitment to a nationwide communications system that promotes the safety and welfare of all Americans" by serving to "promote cooperative efforts by state and local governments, public safety answering point (PSAP) administrators, 911 systems

(Continued from previous page)

that the merger could reduce network redundancy. See, e.g., CompTel/ALTS Petition at 60; EarthLink White Paper at 29.

⁵²⁵ SBC/AT&T Application at 19.

⁵²⁶ *Id.* at 19-20.

⁵²⁷ SBC/AT&T Reply at 11-12.

⁵²⁸ See, e.g., ACN *et al.* Comments at 66-68.

⁵²⁹ Cbeyond *et al.* Petition at 63-65.

⁵³⁰ *Id.* at 64-65.

⁵³¹ See *infra* paras. 190-83.

⁵³² See Letter from James C. Smith, Senior Vice President, SBC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-36, 05-196 (filed Oct. 17, 2005); Letter from Robert W. Quinn, Jr., Vice President - Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-36, 05-196 (filed Oct. 7, 2005).

⁵³³ See generally *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005) (*VoIP 911 Order*).

service providers, and interconnected VoIP providers that will lead to improved emergency services.”⁵³⁴ The Applicants’ actions thus help ensure the timely deployment of E911 services for interconnected VoIP in order to advance the safety and welfare of the public.

D. Efficiencies Related to Vertical Integration

190. As the Commission has previously recognized, vertical transactions may generate significant efficiencies.⁵³⁵ For example, vertical integration may produce a more efficient organizational form, which can reduce transaction costs, limit free-riding by internalizing incentives, and take advantage of technological economies.⁵³⁶ Vertical integration also may reduce prices in the downstream market because the integrated firm, in determining the costs of producing the downstream product and consequently the final price charged to consumers, may consider the real economic cost of the input rather than the higher price (including the upstream profit margin) previously charged by the unintegrated upstream firm. This is referred to as the elimination of “double marginalization.”⁵³⁷

191. We find that significant benefits are likely to result from the vertical integration of the largely complementary networks and facilities of SBC and AT&T. The Applicants assert that their networks are complementary, with SBC providing an extensive network with substantial local fiber, Cingular having an advanced and extensive wireless network, and AT&T providing a global fiber optic long distance network and global data capabilities. They claim that the combined company will be able to offer services over a centrally managed network and provide customers with end-to-end communications and comprehensive network management as well.⁵³⁸ The Applicants maintain that the combination of their services will benefit large enterprise and wholesale customers by enhancing the merged entity’s ability to make available the broad range of communications services and global reach that those customers demand.⁵³⁹ We find that the merger will permit the integration of the complementary networks and assets of SBC and AT&T, giving each carrier facilities it previously lacked. We further find that this network integration will permit the merged entity to offer a wider range of services to its broad range of

⁵³⁴ *Id.* at 10248, para. 5.

⁵³⁵ *News Corp./Hughes Order*, 19 FCC Rcd at 507-08, para. 70.

⁵³⁶ *Id.*

⁵³⁷ *Id.* Double marginalization occurs when an upstream firm sells an input to a downstream firm at a price that exceeds marginal cost, and the downstream firm then sells its product in the downstream market at a price that exceeds its marginal cost. The margin charged by the upstream firm increases the marginal cost of the downstream firm, which results in a higher end-user price than would occur if the input had been priced at marginal cost. Vertical integration in theory reduces the problem of double marginalization because the integrated firm, in determining the uniform price at which it will sell the downstream product, will consider the real economic cost of producing the input. Because vertical integration effectively reduces the marginal cost of the input, it is likely to result in the integrated firm’s setting a lower price for the downstream products, which will benefit consumers. The extent of this benefit, however, will depend crucially on the elasticity of demand for the downstream product. The less elastic is the demand, the greater is the benefit. JEAN TIROLE, *THE THEORY OF INDUSTRIAL ORGANIZATION* 239 (1988) at 174-75; Michael H. Riordan and Steven Salop, *Evaluating Vertical Mergers: A Post-Chicago Approach*, 63 ANTITRUST L.J., 513, 523-36 (1995).

⁵³⁸ SBC/AT&T Application at 15-16; SBC/AT&T Reply at 6-7.

⁵³⁹ SBC/AT&T Application at 15-17; SBC/AT&T Reply at 6-10; Letter from Richard L. Rosen and David L. Lawson, Counsel for SBC and AT&T, to Gary Remondino, Wireline Competition Bureau, FCC at 1-2 (filed Aug. 3, 2005) (SBC/AT&T Aug. 3 *Ex Parte* Letter).

customers. Moreover, customers will benefit not only from new services, but also from the improvements in performance and reliability resulting from the network integration.

192. We reject Cbeyond *et al.*'s assertion that SBC would not add to AT&T's global competitiveness, and that a unified network would offer no new public interest benefit.⁵⁴⁰ We find that the combined company will be able to provide network management services more efficiently to large enterprise and wholesale customers, and customers will value the merged entity's ability to provide one-stop shopping.

E. Economies of Scope and Scale

193. We find that the merger of SBC and AT&T is likely to give rise to significant economies of scope and scale, as well, although these are difficult to quantify. While SBC and AT&T compete in many of the same markets, the focus and success of their efforts has often come in different segments of these markets.⁵⁴¹ The merger thus not only gives the combined company a larger total customer base, but also significant shares of customers across a wider range of communications markets than either carrier had before the merger. The Commission has recognized in the past that, when a "transaction enables the parties to combine their R&D efforts and to spread the cost of those R&D efforts over" a more extensive customer base, this "could result in new products and services that would not have been introduced absent the proposed transaction."⁵⁴² Likewise, the Commission has found that, "if the merged entity can secure larger volume discounts from suppliers, and then pass those lower costs through to consumers in the form of lower end-user prices, this likewise would constitute a public interest benefit that should be considered in balancing the potential harms and benefits of the proposed transaction."⁵⁴³

194. In this regard, the Applicants stress that SBC has a larger base of mass market customers, while AT&T has a larger base of large enterprise customers. Similarly, SBC has been most successful in offering consumer voice and broadband services, wireless services, and local connectivity, equipment, and professional services to local or regional business customers, while AT&T has had success offering large enterprise services, especially those with a global reach.⁵⁴⁴ The Applicants further contend that SBC will bring its investment-oriented focus to the merged firm and that SBC's deep financial resources will ensure that its networks, including critical national defense networks, remain robust and technologically advanced. Finally, they claim that the transaction will accelerate service innovations, such as VoIP and advanced IP services.⁵⁴⁵

⁵⁴⁰ Cbeyond *et al.* Petition at 72; ACN *et al.* Comments at 63. We disagree with ACN *et al.* that improving service quality should not be credited as a merger-specific benefit. Rather, as we find above, the vertical integration of the Applicants' largely complementary networks is likely to produce just such merger-specific benefits.

⁵⁴¹ For example, SBC has a larger base of mass market customers than AT&T, while AT&T has a larger base of large enterprise customers. Likewise, SBC has been most successful offering local service to enterprise customers, while AT&T has had success for a wider range of service offerings. See, e.g., SBC/AT&T Application at 6-9.

⁵⁴² *News Corp./Hughes Order*, 19 FCC Rcd at 619, para. 342.

⁵⁴³ *Id.* at 620, para. 343.

⁵⁴⁴ SBC/AT&T Application at 9-10, 32; SBC/AT&T Reply at 13-17.

⁵⁴⁵ SBC/AT&T Application at 42-43. The record is mixed regarding the merger's likely effect regarding fiber deployment. Compare ACN *et al.* Comments at 57-60 (asserting that SBC/AT&T fail to show their claimed benefit of an increase in fiber deployment is merger specific) with Ad Hoc Telecom Manufacturers Comments at 4-5 (continued....)

195. We agree with the Applicants that, by broadening its customer base, the merged entity will have an increased incentive to engage in basic research and development. We further find that continued intense competition from other carriers will provide sufficient incentives for the merged company to continue to invest in more applied research and product development. As SBC points out, it will have little choice but to continue investment and innovation, and it expects the combined company to spend at least as much on innovation and investment in network infrastructure as the standalone companies did prior to the transaction.⁵⁴⁶ Thus, we reject commenters' claims that the merged firm will be less innovative.⁵⁴⁷

F. Cost Synergies

196. As discussed below, we credit certain cost reductions as benefits resulting from the merger. The Applicants assert that the merger will result in over \$15 billion in savings for both fixed and variable operations costs.⁵⁴⁸ They contend that the cost savings would come from the elimination of duplicative network facilities, staff, and information and operation systems; greater utilization of network assets by combining the companies' traffic streams; greater scalability from business process improvements; and elimination of duplicative information technology (IT) development projects.⁵⁴⁹ The Applicants filed a synergies model in the record, which estimated both cost and revenue synergies.⁵⁵⁰

197. No commenter discusses the synergy model itself. Cbeyond *et al.* argue generally, however, that, to the extent much of the cost savings are reportedly due to increased elimination of personnel, it is not clear that they should be counted as a benefit under the Commission's public interest standard.⁵⁵¹

198. After careful examination of the Applicants' synergy model, we find that we cannot credit the \$15 billion savings in its entirety. First, the model's calculations assume that all the model's synergies continue in perpetuity.⁵⁵² As mentioned above, benefits that are to occur in the distant future may be
(Continued from previous page)

(asserting that the merger will promote fiber deployment). We are not identifying a particular benefit arising from increased fiber deployment specifically, except to the extent that we note generally above that the merger could result in increased incentives to invest in research and development (in which case such benefit would be merger-specific). The record does not allow us to identify particular technologies toward which such increased investment incentives might be directed (such as increased fiber deployment or elsewhere).

⁵⁴⁶ SBC/AT&T Application at 31-33; SBC Info. Req. at 136-37, 148-52.

⁵⁴⁷ ACN *et al.* Comments at 60-62, 65-66; *see also* Cbeyond *et al.* Petition at 68-72; Qwest Petition at 37-39. Although Qwest claims that AT&T offered many VoIP innovations, it does not indicate that those were the only (or even the majority) of innovations in VoIP. Qwest Petition at 38.

⁵⁴⁸ SBC/AT&T Application at 44.

⁵⁴⁹ SBC/AT&T Application at 43-44.

⁵⁵⁰ SBC Info. Req., SBC453019-409 (hereinafter "Synergy Model"); *see also* SBC Info. Req. at 184-191.

⁵⁵¹ Cbeyond *et al.* Wilkie Decl. at para. 54 (arguing that marginal cost reductions are more likely to be cognizable than fixed cost reductions, but that the bulk of the headcount savings will be fixed cost reductions); *see also* NASUCA Comments at 20-21 (asserting that the purported benefit of cost savings is insignificant and that such benefits did not accrue after the *Bell Atlantic/GTE* merger was approved).

⁵⁵² The synergy model calculates the synergies as the present value of the infinitely-lasting stream of extra income and reduced costs. The Commission does not dispute the use of the net present value concept (to quantify future incomes and cost reductions) itself.

discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present. We thus evaluate the evidence of synergy benefits over shorter and more reasonable timeframes included in the model.

199. The remaining scenarios, focusing on the valuation of synergies over time, calculate the value of the synergies as if they lasted to [REDACTED].⁵⁵³ According to the Applicants' synergy model, the merged firm will enjoy synergies of [REDACTED] by [REDACTED] and nearly double that by [REDACTED].⁵⁵⁴ We give more weight to the nearer timeframe of [REDACTED], however, because we expect that before [REDACTED] the telecommunications market will be so different from today that these synergies may no longer be realizable or relevant.⁵⁵⁵

200. We are skeptical of some of the Applicants' cost-savings calculations. For instance, SBC claims that it will save [REDACTED] on advertising annually. According to its synergy model spreadsheet, however, its own advertising is [REDACTED] annually while AT&T's advertising for 2005 is [REDACTED].⁵⁵⁶ Thus, SBC asserts it can reduce its combined advertising by many times the amount that AT&T itself spends on advertising. We are also skeptical of the cited advertising savings, because there is no information on the record supporting SBC's quantification of the potential reductions in its advertising expenditures. Rather, we believe that the combined firm will face largely the same incentive to advertise as before.

201. We reject commenters' assertions that the costs savings of headcount reductions will produce no cognizable benefits.⁵⁵⁷ According to the synergy model, much of the cost savings are from headcount reductions, and those calculations seem reasonable.⁵⁵⁸ We have no reason to doubt that many overhead positions can be eliminated after the merger. But because most of these positions are overhead and thus represent savings in fixed costs, we will not give them the same weight as savings in marginal cost (which are more likely to flow through in the form of retail price reductions). We recognize, however,

⁵⁵³ The synergy model allows cost savings to be calculated out to [REDACTED], but not revenue enhancements. See Synergy Model at 453029 ([REDACTED]); 453241-42 ([REDACTED]).

⁵⁵⁴ As noted above, the Applicants' synergy model does not allow revenue figures to be calculated out to [REDACTED], so a precise synergy benefit for [REDACTED] cannot be calculated from the model. These figures include [REDACTED] of unspecified "Other Transactions Costs." Synergy Model at 453029 ([REDACTED]).

⁵⁵⁵ Because [REDACTED] was one of the model choices, calculating the synergy to that date meant relatively few calculations were necessary. Using any date other than one for which the model was designed would require many manual calculations. Thus, although we ordinarily discount claimed benefits that are more distant, and we would prefer to calculate the synergies based on a shorter time period, using the [REDACTED] date in the model was more administratively practical.

⁵⁵⁶ See SBC Info. Req. at 190; see also Synergy Model at 453132, 453137 ([REDACTED]).

⁵⁵⁷ Cbeyond *et al.* state generally that for many of the jobs that SBC has stated would be eliminated as a result of the merger, reductions in personnel and overhead would reduce the merged company's fixed costs, not its marginal costs, and, thus, would not be passed on as a benefit to consumers. Cbeyond *et al.* Petition at 73-74.

⁵⁵⁸ See Synergy Model at 453022-23 ([REDACTED]); 453024 ([REDACTED]); 453025 ([REDACTED]).

that some of the headcount savings are likely to come from positions where compensation is based primarily on commission; savings in those positions should reduce variable costs.⁵⁵⁹

202. The net present value of the savings from the elimination of sales jobs out to [REDACTED] is about [REDACTED], which the Commission fully credits toward marginal cost reductions. We find that the remainder of the claimed headcount savings represent primarily savings in overhead, to which the Commission generally has given less weight than marginal cost reductions.⁵⁶⁰

203. Certain other claimed cost synergies are unexplained. The synergy model explains very little of the nature of the capital expenditure and operations expenditure reductions.⁵⁶¹ SBC adds some explanation in its response to our information request, but in most cases, the synergy amounts are simply inserted into the model without comment.

204. In summary, we find that the proposed transaction is likely to generate several significant public interest benefits, although it is difficult to quantify precisely the magnitude of some of these benefits.

VII. PROCESS AND ENFORCEMENT

205. As discussed in various sections above, the Applicants have offered a number of voluntary commitments. Because we find these commitments serve the public interest, we accept them and adopt them as express conditions of our merger approval order. In order to ensure that the full benefits of these commitments are realized, we also establish certain procedural and enforcement rules. First, where commitments involve the filing of tariff revisions, we require the Applicants to file such revisions within 30 days of the effective date of the Order. Second, we require the Applicants to file annually a declaration by an officer of the corporation attesting that SBC/AT&T has substantially complied with the terms of the conditions in all material respects. Third, the term of each condition will be as specified in Appendix F.

206. In addition, we will continue to monitor the markets within which the Applicants compete. If the Commission determines that out-of-region competition is failing to develop, then it will revisit the merger conditions on its own motion or pursuant to a petition of a party. Similarly, if the Commission determines that the Applicants are acting to exclude competitors, it will revisit the merger conditions on its own motion or pursuant to a petition of a party.⁵⁶²

207. In addition, as noted above, the Applicants have made a voluntary commitment to offer stand-alone DSL.⁵⁶³ In order to ensure that this commitment benefits consumers, we will monitor all consumer-related problems concerning this service, including reviewing consumer complaints and other information. We expect that the terms and conditions for these services will reflect the underlying

⁵⁵⁹ Synergy Model at 453036-37 ([REDACTED]).

⁵⁶⁰ *EchoStar/DirectTV Order*, 17 FCC Rcd at 20631, para. 191; *see also DOJ/FTC Guidelines* § 4.

⁵⁶¹ In a few cases, the underlying synergy causes are identified, such as the "other Expense/Capex synergy, which is described as [REDACTED]." *See* Synergy Model at SBC453047, SBC453059 ([REDACTED]); *see also* SBC Info. Req. at 184.

⁵⁶² In addition, the public may pursue a claim in accordance with either section 207 or section 208 of the Act. *See* 47 U.S.C. §§ 207, 208.

⁵⁶³ *See* SBC Oct. 31 *Ex Parte* Letter, Attach. at 4; *see also* Appendix F.

competitiveness of the market. The Commission retains its historical discretion to monitor the market and take corrective action if necessary in the public interest.

208. More generally, due to the Commission's interest in widespread broadband availability, the Commission commits to seek comment and issue an annual report assessing the competitiveness of the broadband market and whether there is evidence of anticompetitive conduct in this market.

VIII. CONCLUSION

209. We find that public interest benefits are likely to result from the proposed transaction and that, in light of the DOJ Consent Decree, the merger is not likely to have anticompetitive effects in any relevant markets. As we discuss above, we recognize that there will be an increase in market concentration with respect to certain services, including special access services, retail enterprise services, mass market services, and Internet backbone services. Nonetheless, in each case we find that the possible harms identified by commenters do not justify designating this application for hearing.

210. We also find potential public interest benefits from the proposed merger that, taken as a whole, outweigh the relatively limited possible public interest harms. These public interest benefits relate to enhancements to national security and government services, efficiencies related to vertical integration, economies of scope and scale, and cost savings.

211. We therefore conclude that on balance, the positive public interest benefits likely to arise from this transaction are sufficient to support the Commission's approval of SBC's and AT&T's application under the public interest test of sections 214 and 310(d) of the Communications Act. Finally, we note that the Applicants offered certain commitments related to special access, stand-alone DSL, the Commission's Internet Policy Statement, and Internet backbone services. We find that these commitments serve the public interest, and, accordingly, we accept them and adopt them as express conditions of our merger approval.⁵⁶⁴

IX. ORDERING CLAUSES

212. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214, 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), section 2 of the Cable Landing License Act, 47 U.S.C. § 35, and Executive Order No. 10530, the applications for the transfer of control of licenses and authorizations from AT&T to SBC as discussed herein and set forth in Appendix B ARE GRANTED subject to the conditions stated below.

213. IT IS FURTHER ORDERED that as a condition of this grant SBC and AT&T shall comply with the conditions set forth in Appendix F of this Order.

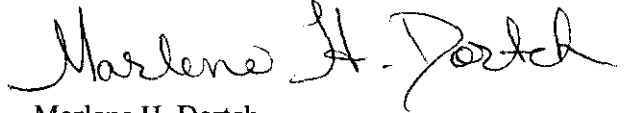
214. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petitions to Deny the transfer of control of licenses and authorizations from AT&T to SBC filed by American Public Communications Council; Broadwing Communications, LLC, and SAVVIS Communications Corporation; Cbeyond Communications, *et al.*; CompTel/ALTS; Consumer Federation of America, *et al.*;

⁵⁶⁴ See generally SBC Oct. 31 *Ex Parte* Letter, Attach.; see also Appendix F.

EarthLink, Inc.; and Qwest Communications International Inc. ARE DENIED for the reasons stated herein.

215. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within 30 days of the date of public notice of this Order.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Marlene H. Dortch". The signature is fluid and cursive, with the first name "Marlene" being the most prominent part.

Marlene H. Dortch
Secretary